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| APPLICATION NO.           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|-------------------------|------------------|
| 09/442,284                | 11/19/1999  | RAPHAEL F. MELOUL    | MENLO-103-DI            | 5637             |
| 7590                      | 08/25/2004  |                      | EXAMINER                |                  |
| GARY W MCFARRON           |             |                      | MAIORINO, ROZ           |                  |
| STEPHEN B HELLER          |             |                      |                         |                  |
| COOK MCFARRON & MANZO LTD |             |                      | ART UNIT                | PAPER NUMBER     |
| Ste 2850 200 West Adams   |             |                      | 3763                    |                  |
| CHICAGO, IL 60606         |             |                      | DATE MAILED: 08/25/2004 |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/442,284             | MELOUL ET AL.       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Roz Maiorino           | 3763                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 19-22,38,39,42 and 43 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 19-22,38,39,42 and 43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5527290 to Zadini et al.

Zadini teach a catheter having a proximal and distal end usable in a system for intraluminal treatment of a selected site of a patient including a transfer device 16 having a central opening for receiving the catheter and for storing at least one treatment element and propelling the treatment element into a lumen in the catheter comprising a connector integral with the proximal end of the catheter including a detent for securing the connector in the central opening of the transfer device; the detent comprises a cantilever arm axially extending from the connector.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim 21, 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Pub No. US 2003/0105509 A1 to Jang et al. and further in view of US Patent NO. 6146354 to Bell or US Patent No. 5769868 to Yock.

Jang teach a catheter with an elongated tube having a proximal and distal ends, first and second lumen extending between the proximal and distal ends and communication at the distal ends, the first lumen sized to receive a treatment element; however Jang does not teach Lumen having an elliptical crosses section. Both Yock and Bell teach elliptical lumen shape.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined the two studies because elliptical shape so well known in the art .

2. Claims 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Pub No. US 2003/0105509 A1 to Jang et al. in view of US Patent No. 5769868 to Yock, or US Patent NO. 6146354 to Bell and further in view of US Patent No.. 6334064 to Fliddian-Green.

Jang teach a catheter with an elongated tube having a proximal and distal ends, first and second lumen extending between the proximal and distal ends and communication at the distal ends, the first lumen sized to receive a treatment element; Bell and Ycock teach Lumen having an elliptical crosses section. Fliddian- Green discloses a multiluman catheter with radiopaque marker

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined the two studies. Radiopaque markers are very common in the art, as stated in Fliddian-Green it will allow the care giver to be able to follow the exact position of the catheter once placed in side of the patient.

5. Claim 38-39 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No.5899882 to Waksman, and further in view of U.S Patent No. 6088610 to Littmann et al.

Waksman discloses an apparatus and method for delivery of a treating element, such as a radiation source, with multilumen catheter. Waksman, however, does not teach a lining that protects the lumen. Littmann teaches a lining inside the lumen for lubrication with ultimately allows for a smoother pass of the guidewire hence protecting the walls from damage.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have combined the studies, because according to Littmann the lining allows for lubrication with ultimately allows for a smoother pass of the guidewire hence protecting the walls from damage.

#### ***Response to Arguments***

6. Applicant's arguments filed 5/3/2004 have been fully considered but they are not persuasive.

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- a. Applicant's arguments with respect to claims 19-21 have been considered but are moot in view of the new ground(s) of rejection.
- b. Applicant alleges Littmann does not anticipate applicants lining because Littmann does not teach a lining for resistance of damage to the lumen, instead Littmann teaches a lining in a lumen for lubrication. However the examiner does not agree with the applicant, lubrication is inherently used for protection against frictional resistance damages on a lumen, hence the fact the Littmann does teach a lining for lubrication means that Littmann has anticipated potential frictional and resistance damage to the lumen wall.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 703-305-2336. The examiner can normally be reached on 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM



  
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